

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

1. Sections Affected
R7-2-307
R7-2-802
- Rulemaking Action
Amend
Amend
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 15-203
Implementing statute: A.R.S. § 15-272 and A.R.S. § 15-702
3. The effective date of the rules:
December 31, 1998
4. A list of all previous notices appearing in the Register, addressing the final rule:
Notice of Rulemaking Docket Opening (R7-2-802): 3 A.A.R. 329, January 31, 1997.
Notice of Proposed Rulemaking (R7-2-802): 3 A.A.R. 824, March 21, 1997.
Notice of Rulemaking Docket Opening (R7-2-802): 3 A.A.R. 678, February 28, 1997.
Notice of Proposed Rulemaking (R7-2-307): 3 A.A.R. 1011, April 11, 1997.
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Corinne L. Velasquez, Administrator
Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007
Telephone: (602) 542-5057
Facsimile: (602) 542-3046
6. An explanation of the rule, including the agency's reasons for initiating the rule:
The State Board of Education has adopted an amendment to R7-2-307 related to awarding of a general educational development (GED) diploma and the eligibility requirements for individuals wishing to take the GED. The Board has repealed language which duplicates requirements established by the GED Testing Service, Washington, D.C.

The Board has also adopted amendments to R7-2-802, relating to school district noncompliance with the Uniform System of Financial Records. These amendments will repeal language in the current rule pertaining to conducting of hearings before the Board. The Board recently adopted R7-2-701 et seq., which set forth the procedures and requirements for the conducting of hearings before the Board. Hearings related to school district noncompliance with the USFR will be conducted pursuant to R7-2-701 et seq.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
8. The summary of the economic, small business and consumer impact:
The Board does not believe that the amendments to R7-2-307 or R7-2-802 will have any economic, small business or consumer impact. The amendments repeal language that is current practice and duplicated either under contract (with the GED Testing Service) or in other Board rules (R7-2-701 et seq.).

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9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
R7-2-307:

Paragraph A: Definitions have been added for GEDTS (defined as the GED Testing Service); USAFI (United States Armed Force Institute) and DANTES (Defense Activity for Non-Traditional Education Support).

Paragraph C: In the language that is being deleted, take out "has not been attending school for six consecutive months preceding application for testing as verified by letter from last school attended," to coincide with language that was certified after the filing of this amendment.

Paragraph D(2)(h): In the language being deleted, change "Administered by" to "Administrator of" to correct an error and coincide with current language.

Paragraph D(7)(g): In the language being deleted, add "as" between "books" and "special" to correct a typographical error and omission.

R7-2-802:

Title: Add "or school" between "School" and "district"; add "and the Uniform System of Financial Records for Charter Schools" to the end of the title, for clarification that the process applies to both charter schools and school districts.

Paragraph A: After "Records" and before "within", add "((USFR))" and the Uniform System of Financial Records for Charter Schools (USFRCS), for clarification that the process applies to both charter schools and school districts, and to establish abbreviations for the remainder of the rule language.

Paragraph B: Delete "Uniform System of Financial Records" and replace with "USFR or USFRCS" for consistency.

Paragraph B(1): Delete "Uniform System of Financial Records" and replace with "USFR or USFRCS" for consistency.

Paragraph C(1): Delete "Uniform System of Financial Records" and replace with "USFR or USFRCS" for consistency.

10. A summary of the principal comments and the agency response to them:

There were no comments received, oral or written, for or against the proposed amendments to R7-2-307 and R7-2-802.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

None.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS

Section
R7-2-307.

ARTICLE 8. COMPLIANCE

R7-2-802.

ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS

R7-2-307. High school equivalency certificates diplomas

A. For the purposes of this rule, the following definitions shall apply:

1. "DANTES" means the Defense Activity for Non-Traditional Education Support.
2. "Department" means the GED Division of the Arizona Department of Education.
3. "GED Test" means the general educational development test approved by the GEDTS and administered at a GED Testing Center.
4. "GED Testing Center" means a testing center established

by the Department for the purpose of administering GED tests and providing GED testing services pursuant to the requirements established by GEDTS.

5. "GEDTS" means the GED Testing Service, Washington, D.C.

6. "USAFI" means the United States Armed Forces Institute.

The Arizona Department of Education may issue a high school equivalency certificate:

1. To any applicant who is 16 years of age or older and has received passing scores on the Tests of Educational Development (GED) which have been administered by an Arizona GED Testing Center.
2. To an applicant who is a member of the U.S. Armed Forces, is 16 years of age or older, and has received scores on the GED test through USAFI, DANTES, or the GED Testing Service, Washington, D.C., provided that the individual's last high school enrollment was in an Arizona high school.

B. Eligibility requirements. Any individual who is 16 years of age or older and who has officially been withdrawn from school for six consecutive months preceding testing may take

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a GED Test.

1. Individuals shall be required to provide the GED Testing Center with positive identification and proof of age; and
2. Individuals who are at least 16 years of age and under 18 years of age shall also be required to provide:
 - a. a signed statement of consent from a parent or legal guardian; and
 - b. a letter from the last school attended verifying that the individual has officially withdrawn from the school and that the individual has been withdrawn for a minimum of six consecutive months preceding the testing date.

The Department may establish Arizona GED Testing Centers as needed at the following state institutions and agencies:

1. Public school districts.
2. High schools which are accredited by the appropriate regional accrediting association.
3. Postsecondary institutions accredited by an agency recognized by the Council on Postsecondary Accreditation.
4. Arizona Department of Education.
5. Any other location provided that a need exists and the organization is approved by the GED Testing Service.

C. Issuance of a diploma. The Department shall issue a high school equivalency diploma to any individual who has not received a high school diploma or high school equivalency certificate or diploma if the individual:

1. meets the eligibility requirements specified in paragraph (B) and has received passing scores on the GED Test; or
2. is a member of the U.S. Armed Forces and has received passing scores on the GED Test through USAFI or DANTES provided that the individual's last high school enrollment was in an Arizona high school. Individuals who have taken the GED Test through USAFI or DANTES shall send their military permanent record and application card to DANTES with a request that the official GED Test scores and application card be forwarded to the Department; or
3. has received passing scores on the GED Test taken at GEDTS, provided that the Department receives an official transcript directly from GEDTS.

Arizona GED Testing Center administer GED tests to applicants who meet the following criteria:

1. The applicant is at least 16 years of age, has positive identification, proof of age, and if the applicant is between 16 years and 18 years of age he/she must present a signed statement of parental consent from his/her parent or legal guardian; or
2. The applicant is 18 years of age, has positive identification and proof of age.
3. The applicant has not received a high school diploma or high school equivalency certificate.
4. The applicant has paid the appropriate fee not to exceed \$15 for the entire GED battery of five tests, or \$3 per test for each test that is retaken.

DE. The Department shall keep a record of test scores for each individual who has taken the GED Test at an Arizona GED Testing Center. Incomplete scores and failing scores will be destroyed after one year from date of initial testing.

Arizona GED Testing Centers shall:

1. Operate in accordance with the policies and procedures established by the Commission on Educational Credit and the Arizona Department of Education and administer and safeguard restricted test materials under the conditions set forth in the GED Manual for Official Centers published by the GED Testing Service;
2. Undertake the following procedures where it is learned

that a test is missing:

- a. The administration of tests must stop immediately;
 - b. The Chief Examiner shall report the missing test, including the test number, form and serial number to the chief administrative officer, the State Administrator of the GED Testing Program, and the Administrator of the GED Testing Service;
 - c. The Chief Examiner shall conduct an investigation to determine the whereabouts of the missing test and the reasons which precipitated the loss, including a detailed review of all test administration procedures and security measures.
 - d. A written report of this investigation and findings shall be submitted to the Chief Administrative Officer, the State Administrator, and the Administrator of the GED Testing Service. This report shall include detailed description of the steps to be initiated to ensure future security of the tests.
 - e. When the State Administrator is satisfied that appropriate security measures will be employed in the GED Testing Center, a recommendation for the resumption of testing at the Center is to be forwarded to the Administrator of the GED Testing Service.
 - f. If the Administrator concurs in the recommendation to resume testing, the State Administrator shall be notified and a copy of the communication forwarded to the Chief Examiner and the Chief Administrative Officer. No testing shall occur until this written notice is received.
 - g. If the investigation has revealed that there was a compromise of a form of the GED test, the remaining stock of testing materials of that specific form shall be returned to the GED Testing Service and replaced with a different form.
 - h. Centers having more than one incident of lost or compromised tests within one year may be closed by the Administrator of the GED Testing Service in consultation with the State Administrator.
3. Provide adequate staff with appropriate professional qualifications for administering the tests;
 4. Ensure separation of any instructional activities from its testing functions;
 5. Maintain a high level of security with regard to the restricted test materials;
 6. Provide adequate physical facilities for administering tests;
 7. Administer GED tests in the following manner:
 - a. Administer the entire battery of five tests to an applicant prior to permitting an applicant to be retested in any single area. Each test must be taken within a specified maximum time.
 - b. Require that upon initial testing an applicant complete the battery of five tests within a maximum period of twelve weeks;
 - c. Ensure that each applicant has taken all tests at the same testing center unless the applicant has received a waiver granted by the State Administrator;
 - d. Require a minimum of 30 days to have elapsed following initial testing in an area in which an applicant seeks to be retested;
 - e. Provide a different form of the test to individuals who are being retested;
 - f. Require that applicants complete any retesting within one year of the date of initial testing. If retesting is not completed within one year, an applicant

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- must repeat all tests and again pay an initial fee;
- g. Administer tests to eligible handicapped candidates as follows:
 - i. Maintain large type, audio tapes and Braille books as special editions of the GED test.
 - ii. Administer the audio tape or Braille edition of the GED test to totally blind individuals.
 - iii. Administer large type or taped editions of the GED test to persons with 20% or less vision.
 - iv. Administer the audio tape edition of the GED test to persons medically certified as having eiphering disabilities such as dyslexia.
 - v. Administer the audio tape edition of the GED test to para/quadrilegies and others who require physical assistance in manipulating test booklets.
 - vi. Prohibit its staff from reading any edition of the GED test battery to an examinee.
 - vii. Permit the use of an abacus, brailled paper and brailled ruler.
 - E. Passing scores on the GED tests for purposes of receiving a high school equivalency certificate are:
 - 1. A minimum standard score of 35 on each of the five tests described in (D)(7)(a); and
 - 2. An average standard score of 45 on the five tests described in (D)(7)(a).
 - G. In order to receive a high school equivalency certificate from the Department, an individual must comply with the following:
 - 1. An individual who has taken the GED tests in an Arizona GED Testing Center shall submit or have submitted evidence of passing scores to the Department.
 - 2. An applicant who has taken the GED tests through USAFI, DANTES or the GED Testing Service, Washington, D.C., must request a military permanent record and application card through the Department and indicate when and where the tests were taken. Such applicant should also have his or her application card verified by an educational officer or adviser.
 - 3. Applicants who have taken the GED tests through USAFI or DANTES should send their military permanent record and application card to DANTES, at the appropriate address which may be obtained from the Arizona Department of Education, with the request that the official GED scores and application card be forwarded to the Arizona Department of Education.
 - 4. An applicant who has been tested at the GED Testing Service, Washington, D.C., must request that an official transcript be sent directly to the Department from the GED Testing Service.
 - 5. A fee of \$5 must accompany a request for a duplicate certificate.

ARTICLE 8. COMPLIANCE

R7-2-802. School and school district compliance with the Uniform System of Financial Records and the Uniform System of Financial Records for Charter Schools

- A. Upon receipt of a report from the Auditor General that a school or school district has failed to comply with the Uniform System of Financial Records ("USFR") or the Uniform System of Financial Records for Charter Schools ("USFRCS") within 90 days after having received a notice of noncompliance from the Auditor General, the State Board of Education ("Board") shall review the Auditor General's report to determine whether the school or school district is in noncompliance.

- B. When the Board determines that a school or school district is in noncompliance with the Uniform System of Financial Records USFR or USFRCS, it shall give written notice to the school or district of its determination. The written notice shall advise the school or district of the following:
 - 1. The Superintendent of Public Instruction shall withhold distribution of State funds to the school or district until such time as the Auditor General reports compliance with the Uniform System of Financial Records USFR or USFRCS unless a hearing is requested by the school or district.
 - 2. The school or district has ten days from the receipt of the written notice of noncompliance by the Board to submit a written request for a hearing.
 - 3. If the school or district makes a timely request for a hearing, the hearing will be held within 30 days of receipt of the district's request to the Board unless an extension of time is granted by the Board pursuant to the hearing procedures specified in R7-2-701 et seq.
- C. Following a timely request for a hearing as provided in subsection (B) of this rule, the Board shall schedule a formal hearing and shall give the district notice of the hearing as provided in A.R.S. § 41-1009(A) and (B).
- D. Hearings held pursuant to this rule shall be conducted as provided in A.R.S. § 41-1010.
- E. The Board's decision
 - 1. The Board shall determine whether the school or school district was in compliance with the Uniform System of Financial Records USFR or USFRCS within 90 days after having been informed of noncompliance by the Auditor General, and whether the district is in compliance with the Uniform System of Financial Records USFR or USFRCS at the time of the hearing.
 - 2. A decision by the Board shall be determined by a majority of the members of the Board and shall be based upon substantial evidence.
 - 3. A decision shall be rendered within 30 days after the hearing.
 - 4. Within 30 days after a decision is reached, copies of the written decision shall be served upon the parties personally or be certified mail.
 - 5. The parties shall have the opportunity to provide proposed findings of fact and conclusions of law to the Board at or before the time of the hearing before the Board.
- F. Rehearing procedure
 - 1. Any party aggrieved by a decision rendered by the Board may file with the Board, not later than 15 days after service of the decision, a written motion for rehearing of the time decision, specifying the particular grounds therefor.
 - 2. A motion to alter or amend a decision or order shall be filed not later than 15 days after service of the decision.
 - 3. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board.
 - 4. A response may be filed within 10 days after service of such motion by any other party or by the Attorney General.
 - 5. The Board may require the filing of written memoranda upon the issues raised in the motion and may provide for oral argument.
 - 6. The Board may consolidate the hearing to consider the motion for rehearing with the requested rehearing.
 - 7. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
 - a. Irregularity in the administrative proceedings of the

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- agency or its hearing officer or the prevailing party, or any order, or abuse of discretion, whereby the moving party was deprived of a fair hearing;
- b. Misconduct of the Board or the prevailing party;
 - c. Accident or surprise which could not have been prevented by ordinary prudence;
 - d. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 - e. Excessive or insufficient penalty;
 - f. Error in the admission or rejection of evidence or other errors of law occurring in the administrative hearing;
 - g. The decision is not justified by the evidence or is contrary to law.
8. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in paragraph (7). An order granting a rehearing shall specify with particu-

larly the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.

9. Not later than 15 days after a decision is rendered, the Board may on its own initiative order a rehearing or a review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds on which the order is based.
10. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within ten days after service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days, by the Board for good cause shown, or by the parties by written stipulation. The Board may permit a reply affidavit by the moving party.